IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1755 of 2003

Date of Decision: 27.10.2004.

G M MALIK

Versus

UNION OF INDIA

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

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1. Special Civil Application No. 1755 of 2003

MR KK SHAH for Petitioner.
MS MEGHA JANI for Respondents.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

Rule. Ms. Meghaben Jani, learned Counsel appearing for the Respondents waives service of Rule on

behalf of the Respondents. In the facts and circumstances of the case, with consent of the learned advocates for the parties, the matter is taken up for final hearing today.

Whether reporters of Local Papers may be allowed to see the Judgment?

Petitioner was appointed in Category-D in the Railways on December 31, 1959. He was absent from January 1, 1969 to March 4, 1977. Petitioner submits that he had been informing the Department from time to time that he was suffering from tuberculosis. He furnished application and medical certificates. However, respondents submit that the petitioner had neither furnished any application nor medical certificate. Thereafter, the petitioner reported for duty in March, 1977. After his medical check up by the Medical Board, he was allowed to join. Petitioner retired as a train clerk on July 31, 1991. He was not paid the salary for the period of absence from January 1, 1969 to March 4, 1977. Increments were recorded in his service book, later withdrawn after his retirement. Pension of the petitioner has been fixed without taking into account the period of absence from 1.1.1969 to 4.3.1977 and without considering the increments. The respondents say that the period of absence is taken interruption in service but no order to that effect is placed on record. The position is that the period from 1.1.1969 to 4.3.1977 has not been counted towards the qualifying service but with respect to increments, learned counsel Ms. Meghaben Jani submits that the increments were granted, later withdrawn but it would not affect the ultimate salary of the petitioner for the purpose of pension. Therefore, only question for determination is, whether the petitioner is entitled to count the period from 1.1.1969 to 4.3.1977 towards qualifying service and pension and whether the petitioner is entitled for interest on the amount of arrears of revised pension.

Rules on the subject are considered but there is no rule governing the peculiar facts of the case. Petitioner submits that he could not join the service as he was ill with tuberculosis. He informed the department with an application for leave supported by medical certificates. The respondents submit that they were not informed, neither application nor medical certificates filed. However, in absence of record, which is not available to the respondents, benefit must go to the petitioner, therefore, legitimate conclusion can be that

he was suffering from tuberculosis; he was taking treatment during this period; he had applied for leave with medical documents. These facts were within the knowledge of the respondents. Therefore, before permitting to join duty, petitioner was subjected to medical examination by the Medical Board. Absence period ought to have been regularized appropriately but no order to that effect was passed at the relevant time though later prayer for regularization has been rejected. Respondents submit that this period has been considered break in service which cannot be done without hearing the petitioner since break in service is penal in nature. No order to this effect has been passed by the respondents while the petitioner was in service but the action has been taken later by order dated 19.6.1996, after superannuation of the petitioner. Even otherwise, this kind of absence can be counted for the purpose of pension when no disciplinary action has been taken nor there is rule to prohibit it.

What emerges from the examination of the matter is that the claim of the petitioner for counting period from 1.1.1969 to 4.3.1977 can be calculated towards qualifying service alongwith other period while calculating pension of the petitioner and the respondents are required to ascertain whether the withdrawal of increments would or would not affect the pension and in case it is found that it would affect the pension, then, increments be also released and taken into consideration for determination of pension.

Now the question for determination is whether the respondents are required to be directed to pay interest on the unpaid pension of the petitioner ? It is a problem peculiar in nature, therefore, the respondents tried to examine it deeply so that no illegality is committed; that apart, the matter was pending in the Court. Therefore, arrears of pension shall be paid without interest.

In the result, petition is allowed. Judgment dated 6.12.2001 passed in OA No. 439/2000 and order dated 13.3.2002 passed in RA No. 12/2002 by the Central Administrative Tribunal are quashed. Respondents are directed to count the period from 1.1.1969 to 4.3.1977 towards qualifying service alongwith other period for calculating the pension of the petitioner. Respondents are also directed to ascertain whether the withdrawal of increments would or would not affect the pension and in case it is found that it would affect, then, increments be also released and taken into account for determination

of pension. This judgment be implemented within two months from today, otherwise, carry interest at the rate of 6% p.a. from expiry of two months till the date of payment. Rule is made absolute in terms indicated hereinabove with no order as to costs.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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